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|-------|-----------------------|--------|----------|------|------|---|---|

The new threat to lesser prairie chickens: How some legislators are attempting to undermine protection of the bird

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The lesser prairie chicken – a mid-sized, brown and white striped bird inhabiting the southern Great Plains – has become a symbol of the growing tension between energy development and species conservation. Recent increases in oil and gas drilling, wind energy production, and other human activities impacting the lesser prairie chickens' habitat has led to a significant population decline. A study by the [Western Association of Fish and Wildlife Agencies](#), cited by the [U.S. Fish and Wildlife Service](#) (FWS), estimates that the number of lesser prairie chickens fell by roughly 50 percent in 2012-13. Seeking to reverse this trend, in March 2014, the FWS [listed](#) the lesser prairie chicken as threatened under the Endangered Species Act (16 U.S.C. § 1531 et seq.). Earlier this year, legislation to delist the chicken was narrowly defeated in the Senate, marking the second attempt to weaken species protections in just one month.

The Endangered Species Act was passed in 1973 with the aim of protecting imperiled species and the ecosystems upon which they depend. To that end, the Endangered Species Act restricts activities that negatively impact species listed as endangered or threatened. For the purposes of the Act, an “endangered species” is one which is in danger of extinction throughout all or a significant portion of its range. A “threatened species” is one which is likely to become endangered in the foreseeable future.

At the time of its enactment, the Endangered Species Act received broad support from both parties in Congress. Recently however, the Act has faced increasing opposition from Republicans and Democrats concerned that it may impede energy and other projects. As Melinda Taylor previously [reported](#), in December 2014, Congress approved a rider to a spending bill which prohibits the FWS from listing four species of sage grouse – a close relative of the lesser prairie chicken – under the Endangered Species Act.

The sage grouse once inhabited over 62 million hectares of land extending from Washington to Nevada and east to the Dakotas. This area has seen considerable oil and gas development in recent years, overlapping with the Niobrara, Bakken, and other important shale plays. Similarly, the habitat of the lesser prairie chicken – covering parts of Texas, Oklahoma, Kansas, Colorado, and New Mexico – overlaps with significant oil and gas formations, including the Permian Basin. The construction of oil wells and related facilities in this area has a significant impact on the chickens, which avoid vertical structures that could be used as perches by hawks, eagles, and other predators.

Recognizing this, the FWS has adopted [rules](#) that give oil and gas producers the option to sign on to a state-based [conservation plan](#) designed to protect the lesser prairie chicken. Any producer that does not agree to the plan is at risk of prosecution under the Endangered Species Act if it kills, harms, or otherwise “takes” a chicken in the course of its operations.

The FWS rules have faced strong opposition from the energy industry, which argues that major threats to the lesser prairie chicken have already been addressed through voluntary conservation efforts. According to industry participants, further regulation will lead to project delays and increased costs, hampering development in one of the nation's largest basins. Responding to this concern, on January 28, Senate Republicans sought to pass amendments to [S.1](#) (a bill to approve the Keystone XL pipeline) to remove lesser prairie chickens from the list of threatened species protected under the Endangered Species Act. They fell just 6 votes short.

This is not the first time Congress has intervened in the listing of threatened and endangered species. Back in 2011, a controversial provision removing gray wolves in Montana, Idaho, Washington, Oregon, and Utah from the endangered species list was included as a rider to a budget bill. The provision was a response to lobbying by hunters and ranchers who argued that growing wolf populations threaten game and livestock. On the other side of the debate were environmentalists, concerned that the provision could lead to the culling of wolves, placing them at risk of extinction. To ensure consideration of this risk, the environmental groups argued that the decision whether to delist gray wolves should be made by scientists, not politicians.

The Endangered Species Act requires listing decisions to be made “solely on the basis of the best scientific...data available” regarding the status of the species and the threats it faces. Congress inserted the word “solely” in 1982 to clarify that the question of whether a species should be added to, or removed from, the endangered species list is a biological one that should be answered without reference to economic or other non-scientific factors. Those factors can, however, be considered in devising appropriate measures to protect listed species.

Various sections of the Endangered Species Act provide for consideration of the economic and other impacts of protecting species that have been listed as endangered or threatened. For example, under section 4 of the Act, the FWS must designate critical habitat for a listed species “after taking into consideration the economic impact, the impact on national security and any other relevant impact.” Likewise, economic and other non-scientific factors may also be considered by the FWS when granting exemptions under section 7 of the Act. This gives the FWS significant flexibility to protect listed species, while minimizing costs to industry and others. In any particular case, society could decide that the cost of protecting a listed species outweighs the benefit. That decision should, however, be made separately from the decision to list a species as threatened or endangered on scientific grounds.

Legislative delisting of threatened and endangered species undermines this fundamental principle. It takes listing decisions out of the hands of the FWS, which is required to act on the basis of science, and puts them into the hands of politicians, often acting on economic or other non-scientific grounds. Such politicization of listing decisions has, perhaps unsurprisingly, faced widespread public opposition. A recent [poll](#) by the Defenders of Wildlife found that 92 percent of people believe decisions about species protection should be made by scientists, not politicians. Many in Washington do not, however, seem to be listening.

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